POLAND

TRADE SUMMARY

The United States registered a trade surplus of $12 million with Poland in 1999, a decline of $87 million from 1998. Poland was the United States' 56th largest export market in 1999. In 1999, U.S. exports to Poland were $825 million, a 6.5 percent decrease from 1998. U.S. imports from Poland were $813 million in 1999, an increase of $30 million (3.9 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was $1.7 billion, a 39.6 percent increase from 1997.

IMPORT POLICIES

Poland's current trade policies are shaped primarily by its World Trade Organization (WTO) commitments and – increasingly – by the likelihood that Poland will become a full member of the European Union (EU) within several years. Poland's trade regime during the 1990s was marked by an overall trend towards lower tariffs, although the government did impose an import surcharge from 1993-1996. The past decade has also seen Poland conclude a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries, the Central European Free Trade Agreement (CEFTA) countries, the Baltic states and Israel. In line with its commitments in the Uruguay Round, Poland continues to lower its Most-Favored-Nation (MFN) tariffs on industrial goods; the average tariff rate in 2000 is 9.24 percent.

As a result of its preferential trade agreements, most of Poland's imports enter duty-free. In 1999, 73 percent of Poland's total industrial imports were free of tariffs, 23 percent (including those from the United States) fell under MFN tariffs, and three percent were subject to GSP tariffs applied to developing countries. Under Poland's Association Agreement with the EU, tariffs on industrial products from the EU will be completely phased out by the end of 2001. Also, these preferential trade agreements provide for reduced tariffs rates on some non-industrial products on a selective basis. U.S. products, which are subject to Poland's MFN rates, often encounter a significant tariff differential when competing against EU products, which enter duty-free or at a preferential rate. Specifically, U.S. exporters of automobiles, auto parts, small aircraft, electrical generating equipment, mining equipment, lumber and wood products, distilled spirits, wine, sporting goods, cosmetics, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections, and grapefruit have complained about this disadvantage. Moreover, Poland applies very high duties of 75-105 percent *ad valorem* on imported alcoholic beverages (and nearly 370 percent for imports beyond the quota) and 30-452 percent *ad valorem* duties on chocolate and confectionery products.

Poland's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates, and so joining the EU, which would require Poland to adopt the EU's CXT rates, would benefit U.S. exporters of industrial products. Adopting the CXT would likely have a negative impact on some U.S. agriculture exports where the EU's CXT rates often exceed Poland's MFN rates. The U.S. has been urging Poland to reduce its high MFN tariff rates down to the EU's CXT levels prior to EU accession. The U.S. and Poland are engaged in discussions on how to address this tariff differential problem. Poland has responded to individual U.S. exporters' complaints about automobiles and soybean meal by unilaterally granting a reduction in customs duties on large engine automobiles and soybean meal, although these measures have not fully satisfied the exporters involved.

While the general trend has been towards liberalization of trade, the Polish government has increased tariff barriers on several agricultural products in recent years. Although

Poland negotiated high bound tariff levels for agricultural products in the Uruguay Round, the average level of applied agricultural tariffs is substantially lower at 23 percent in 2000. To protect its sugar industry, the Polish government has imposed additional duties on imported products containing sugar, although a number of EU products are exempt from them. In January 1999, an autonomous tariff on pork was increased from 60 percent to 83.3 percent; in March, changes were introduced to the customs tariff, eliminating customs concessions on imports of some agricultural products from countries with which Poland has free trade agreements, especially CEFTA countries and the EU. Tariffs were increased on over 100 items, including yogurt, pork, poultry, milk, wheat and rye. In late 1999, Poland increased duties on wheat flour, wheat and rye flour mixtures, bran, and barley malt, none of which are significant U.S. exports to Poland.

In past years, Poland used trade restrictions as a limited protective measure. Since 1998, Poland commenced antidumping procedures and safeguards to protect its markets against X-ray films from Germany, coal from Russia, and shoes and gas lighters from China. Recent safeguard actions have resulted in increased duties for Chinese shoes and a tariff-rate quota on Russian coal.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Despite improvements over the past decade, exporters of U.S. products to Poland continue to complain about the lack of transparency and complexity that surround standards and certification matters. Some U.S. firms have reported that these requirements are arbitrary and excessively burdensome and consider them to be a significant obstacle to doing business in the Polish market. For example, U.S. lumber and wood products industry associations stated that Poland's Institute of Building Technology, which has responsibility for product, code and standard approval, is predisposed against wood frame construction, and this has hindered U.S. exports of new wood products for use in construction. Poland's extensive system for the certification and approval of products is burdensome. U.S. exporters to Poland have complained about the complexity and slowness of the testing process, lack of transparency in the administration of tariff-rate quotas, and vague information on fees and import procedures. Poland's arbitrary application of sanitary and phytosanitary standards on occasion has seriously disrupted trade. Most notably, the strict enforcement of a policy of zero tolerance of certain weed seeds, including ambrosia or ragweed seeds, which is common in imported U.S. grains and oilseeds, has resulted in substantial export losses for U.S. grains, oilseeds and products. Import permits are still required for live plants, fresh fruits, vegetables, meat and live animals.

In November 1999, the Polish government adopted new regulations on genetically modified organisms (GMOs). The regulations have no minimum tolerance levels for foods containing GMOs. Approval procedures for importation of new varieties of plants and livestock genetics have created difficulties for U.S. firms.

GOVERNMENT PROCUREMENT

Poland's procurement law is modeled on the United Nation's procurement code and is based on competition, transparency, and public announcement, but does not cover most purchases by state-owned enterprises. Single source exceptions to the stated preference of unlimited tender are allowed only for reasons of national security or national emergency. The domestic performance section in the law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Companies with foreign participation organized under the Joint Ventures Act of 1991 may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. The law established a Central Policy Office of Public Procurement, which lists all tenders valued at over 30,000 euro. Poland has the status of an observer to the WTO's Government Procurement Agreement (GPA), but is not yet a signatory. It would have to become a signatory in order to join the EU. A new Public Procurement Law is being prepared and is expected to come into force on January 1, 2001.

EXPORT SUBSIDIES

With its 1995 accession to the WTO, Poland ratified the Uruguay Round Subsidies Code and eliminated earlier practices of tax incentives for exporters, but it still offers drawback levies on raw materials from EU and CEFTA countries which are processed and re-exported as finished products within 30 days. The U.S. lumber and wood products associations complained about Poland's elimination of duty drawbacks on goods from non-EU sources which are then exported from Poland to the EU. Some politically powerful state-owned enterprises continue to receive direct or indirect production subsidies to lower export prices. Poland's past policy of rolling over unused WTO sugar subsidy allowances to be used in combination with a given year's allowances appears to be no longer practiced. The one existing export insurance program has very limited resources, and rarely guarantees contracts to high-risk countries such as Russia, placing Polish firms at a disadvantage to most western counterparts.

In August 1999, the Polish government announced its intention to amend laws and regulations governing export promotion. These steps, which will be taken in 2000, are designed to both improve Poland's export performance and bring Polish regulations fully into compliance with EU regulations and practices in other OECD countries.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Poland has made major strides in improving protection of intellectual property rights over the past decade, but piracy of U.S. copyrighted works constitutes a major problem. The U.S.-Polish Bilateral Business and Economic Treaty contains provisions for the protection of U.S. intellectual property. That treaty came into force in 1994, once Poland passed a new Copyright Law that offers strong criminal and civil enforcement provisions and covers literary, musical, graphical, software, audio-visual works, and industrial patterns.

As a member of the WTO, Poland is party to the WTO TRIPS Agreement and was to have fully complied with all TRIPS standards as of January 1, 2000. Legislation that would amend both the Copyright Law and the industrial property laws (patent, trademark, and industrial design) was not passed before the end of 1999, this raises concerns regarding Poland's compliance with TRIPS. According to the Polish Government, the copyright amendments would provide full copyright protection of all pre-existing works and sound recordings. The Polish government aims to pass both bills in the first half of 2000. The U.S. pharmaceutical industry is concerned about the adequacy of Poland's protection of test data submitted to the authorities to obtain marketing approval, which is required to be protected under the WTO TRIPS Agreement. Poland has not yet adopted the EU's data exclusivity regime, which provides 6-10 years of protection, though it would have to do so in order to join the EU.

Despite a relatively strong legal foundation, Poland continues to have high rates of copyright piracy. Most of the pirated material available – particularly CDs and CD-ROMs – is imported from factories in the former Soviet Union. Industry associations estimate 1998 levels of piracy in Poland to be: 40 percent in sound recordings, 25 percent in motion pictures, and

60 percent in software. Cable television piracy in Poland is no longer a serious problem, as all operators are required to be licensed by the National Broadcasting Council. Theft of pay-television signals is a growing problem and Poland lacks anti-circumvention legislation. While enforcement has improved in recent years, the cumbersome judicial system remains an impediment. Criminal penalties will increase and procedures for prosecution will be somewhat simplified when the pending legislation takes effect. Poland is currently on the "Special 301 Watch List" due largely to legislative shortcomings and concerns over insufficient enforcement.

SERVICES BARRIERS

Poland has made progress, but many barriers remain, especially in audio-visuals, financial services, and telecommunications. In November 1997, the government implemented by regulation a minimum 50 percent European production quota for television broadcasters. Legislation introduced into parliament in late 1999 would codify the quota regime, though it would require broadcasters to meet the 50 percent quota only where practical, which is in accord with the EU's broadcast directive. In January 1998, new laws on banking and the central bank came into force. As a condition of its accession to the OECD, Poland agreed to allow firms from OECD countries to open branches and representative offices in the insurance and banking sector starting in 1999. The government began privatizing the state telecommunications monopoly, TPSA, in October 1998, and agreed to open domestic long-distance service to competition in 1999 (although that process will not be complete until some point in 2000) and international services in 2003. Local telephone service licenses are being awarded, but interconnection remains the domain of the state monopoly. Private telecommunications service providers complain that government regulation is not yet effective enough to guarantee a level playing field against TPSA. An independent telecommunications regulator has not yet been established, and U.S. firms describe the licensing system as non-transparent and discriminatory.

INVESTMENT BARRIERS

Polish law permits foreign ownership of up to 100 percent of corporations, although limits remain for foreign investment in certain "strategic sectors" such as mining, steel, defense, transport, energy, and telecommunications. Broadcasting legislation restricts foreign ownership to 33 percent (although proposed legislation would increase this to 49 percent for terrestrial broadcasting and 100 percent for satellite), and foreign stakes in air and maritime transport, fisheries and domestic long-distance telecommunications are confined to 49 percent. Foreign ownership in cable networks is limited to 49 percent, but exceptions are allowed for foreign investments in excess of that amount made before the law went into effect in 1995. No foreign investment is currently allowed in gambling or international telecommunications, though Poland has committed to allowing foreign investment up to 49 percent for international long-distance by 2003. The government is working on privatization of telecommunications, steel mills, and the energy sector, as well as a restructuring plan for the defense industry that calls for significant foreign investment. As a result of OECD accession, foreigners in Poland may purchase up to 400 square meters of urban land or up to one hectare of agricultural land without a permit. Larger purchases, or the purchase of a controlling stake in a Polish company owning real estate, require approval from the Ministry of Interior and the consent (not always automatic) of both the Defense and Agriculture Ministries.

ANTI-COMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Anti-Monopoly Office and State

Trade Inspection Office. This new office is empowered to fine state-owned as well as privately owned firms monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding this authority, thereby strengthening its ability to act.

ELECTRONIC COMMERCE

In Poland, sales through the Internet are unrestricted. Normal Value Added Tax (VAT) fees do apply to merchandise purchases through the Internet. Customs duties and VAT apply to imported software. The Ministry of Finance and Customs Office are at the initial stages of considering tax regulations for software purchased and delivered via the Internet. High interconnection charges have hindered the development of electronic commerce in Poland.